

**REMARKS**

In the above-referenced Office Action, the examiner rejected Claims 14-17 under 35 U.S.C. 102(b) as being anticipated by Deike (USPN 3,735,822). She stated, in support of her rejection, "With respect to claims 14-17, Deike discloses a driver, the driver comprising: a body portion (61) in the form of a pipe having an elongated cavity; an impact member (63) welded to the body portion (61) adjacent an upper end thereof and disposed substantially normal to the elongated cavity, the impact member (63) having an upper surface and a radially opposed lower surface engageable with an upper end of an elongated object (64); the elongated cavity having a blind end within the body portion formed by the radially opposed lower surface of the impact member (63) and; and a pair of elongated handle (70) extending substantially parallel to the elongated cavity and spaced apart laterally from the elongated cavity."

This rejection is not believed to be well founded based upon a clear understanding of the cited reference for the following reason.

Independent Claim 14 specifically recites, "... a body portion having an elongated cavity for receiving such elongated object;

an impact member carried by said body portion adjacent an upper end thereof and disposed substantially normal to said

elongated cavity, said impact member having an upper surface for receiving impacts from a hammer ...".

On the other hand, the cited reference clearly shows a dual concentric pipe arrangement having an inner pipe (62) for receiving the member to be driven therein. Pipe (62) is closed at its upper end with a member (64) having a bottom surface in contact with the upper end of the member being driven. The upper end of pipe (62) is contained within pipe (61). Therefore, the upper surface of member (64) cannot receive impacts from a hammer.

Dependent Claims 15-17 add further limitations to independent Claim 14 and are therefore also not anticipated by the cited reference.

Accordingly, the Examiner is respectfully requested to withdraw her rejection of Claims 14-17 under 35 U.S.C. 102(b) as being anticipated by Deike (USPN 3,735,822).

Next, the Examiner rejected Claims 1-3 and 9 under 35 U.S.C. 102(b)/103(a) as being anticipated by and/or unpatentable over Bowers (USPN 5,097,912).

In support of this rejection, the Examiner stated, "With respect to claims 1-3 and 9, Bowers discloses a driver, the driver comprising: a body portion (12) having an elongated cavity (46); an impact member (18,22,26) carried by the body portion (12) adjacent an upper end (14) thereof and disposed

substantially normal to the elongated cavity (46), the impact member (18,22,26) being generally rectangular shaped, and having an upper surface and a radially opposed lower surface (18) engageable with an upper end (74) of an elongated object (68), the surface area of the impact member (18) is greater than the cross-section of the body portion (12); the elongated cavity (46) having a blind end within the body portion formed by the radially opposed lower surface of the impact member (18); and at least one elongated handle (32) attached the body portion (12), the handle (32) extending substantially parallel to the elongated cavity (46) and spaced apart laterally from the elongated cavity (46).

Bowers discloses an impact member (18) having a "substantially square" shape (column 2 lines -65). One could easily draw the conclusion that the device of Bowers teaches an impact member having a length greater than a width thereof the impact member (18). However, should it be found that such an observation is inconclusive, it would have been obvious to one having ordinary skill in the art the time of the invention to modify the shape of the impact member to have a length greater than its width, since applicant has not disclosed that such a shape solves any stated problem or is for any particular purpose and it appears that the invention would perform equally well with a square impact member having an equal length and width, as

such a surface would likewise serve as an adequate surface for impact."

This rejection is likewise not thought to be well founded for the following reasons.

First, independent Claim 1 clearly recites, "...a body portion having an elongated cavity for receiving such elongated object..." The object being driven by the cited reference is never disposed within the elongated cavity.

Second, Claim 1 further recites, "... said impact member having an upper surface for receiving impacts and a radially opposed lower surface engageable with an upper end of such elongated object..." Clearly this can never occur with the apparatus of the cited reference.

Dependent Claims 2, 3 and 9 add further limitations to independent Claim 1 and are therefore also not anticipated or made obvious by the cited reference.

Accordingly, the Examiner is respectfully requested to withdraw her rejection of Claims 1-3 and 9 under 35 U.S.C. 102(b)/103(a) as being anticipated by and/or unpatentable over Bowers (USPN 5,097,912).

The Examiner then rejected Claims 4-8 and 10-12 under U.S.C. 103(a) as being unpatentable over Bowers (USPN 5,097,912 in view of Deike (USPN 3,735,822).

In support of this rejection, the Examiner stated, "Regarding claims 4 and 5, Bowers discloses a driver having a body portion (12) in the form of a hollow, elongated member having a square cross-section. Bowers does not disclose the body portion (12) as a pipe<sup>1</sup>. Deike teaches that it is known to utilize a driver, having a body portion (61) in the form of a pipe having an elongated cavity. It would have been obvious to one having ordinary skill in the art at the time of the invention to modify the body portion of Bowers to the pipe formation of Deike, since Deike states at column 1 lines 33-40 that such a configuration allows for accommodation of an attachment or post during an impact/ramming operation. Thus, such a configuration is deemed to be equivalent to the square cross-section body portion of Bowers.

With respect to claims 6-8, 10 and 11, Bowers discloses a driver having a pair of handles fastened to transverse portions (28), wherein the transverse portions are connected to a body portion (12) of the driver. Bowers does not disclose the driver having gussets welded to the driver. Deike teaches a driver, having a body portion (61) welded to an impact member (63), and a pair of handles (70) with a transverse portion (68) welded to the body portion via two gussets (69) welded to the body portion (61). While Deike does not teach the two gussets being welded to both the body portion (61) and the impact member (63), It would

have been obvious to one having ordinary skill in the art to locate the two gussets at the intersection of the body portion and the impact member, since it is has been held that rearranging parts of an invention involves only routine skill in the art. In re Japikse, 86 USPQ 70. Furthermore, it appears the invention would work equally well if the two gussets are located on the body portion or at the intersection of both the impact member and the body portion, as suggested by Applicant (page 9, lines 19-20) and disclosed by Deike.

In reference to claim 12, Bowers discloses a driver having handles (32), but does not disclose the handles having hand grips. Deike teaches a driver having handles (70) with hand grips (71). It would have been obvious to one having ordinary skill in the art at the time of the invention to modify the handles of Bowers to include the hand grips of Deike, since Deike states at column 1 lines 18-31 that such a modification allows for the operator to comfortably grasp the handles of the driver."

Dependent Claims 4-8 and 10-12 add further limitations to independent Claim 1 and are therefore also not made obvious by the cited references.

Therefore, the Examiner is respectfully requested to withdraw her rejection of Claims 4-8 and 10-12 under U.S.C.

103(a) as being unpatentable over Bowers (USPN 5,097,912 in view of Deike (USPN 3,735,822).

Further, the Examiner rejected Claim 13 under 35 U.S.C. 103(a) as being unpatentable over Bowers (VSPN 5,097,912 in view of Deike (USPN 3,735,822) as applied to claim 4 above, and further in view of Amicangelo (VSPN 6,364,031). To support this rejection she stated, "Bowers in view of Deike discloses a driver including a pipe (Bow~rs-61) but does not disclose the pipe (Bowers-61) having a slot. Amicangelo teaches a driver (10) having a pipe body (40) and an impact member (42, 44), with a slot (46) in the pipe (40) and remote from the impact member (42, 44). It would have been obvious to one having ordinary skill in the art at the time of the invention to further modify the driver of Bowers in view of Deike to include the slot of Amicangelo for the purpose of facilitating the removal of an elongated article that has been driven into the earth (Amicangelo-column 6, lines 33)."

Dependent Claim 13 adds a further limitation to independent Claim 1 and is therefore also not made obvious by the cited references.

Therefore, the Examiner is respectfully requested to withdraw her rejection of Claim 13 under 35 U.S.C. 103(a) as being unpatentable over Bowers (USPN 5,097,912 in view of Deike

(USPN 3,735,822) as applied to claim 4 above, and further in view of Amicangelo (USPN 6,364,031).

Finally, the Examiner rejected Claims 18-21 under 35 U.S.C. 103(a) as being obvious over Deike (USPN 3,735,822). She stated, "With respect to claims 18-21, Deike discloses a driver, having a body portion (61) welded to an impact member (63), and a pair of handles (70) with a transverse portion (68) welded to the body portion via two gussets (69) welded to the body portion (61). Deike does not disclose the two gussets being welded to both the body portion (61) and the impact member (63). It would have been obvious to one having ordinary skill in the art to locate the two gussets at the intersection of the body portion and the impact member, since it is has been held that rearranging parts of an invention involves only routine skill in the art. In re Japikse, 86 USPQ 70. Furthermore, it appears the invention would work equally well if the two gussets are located on the body portion or at the intersection of both the impact member and the body portion.

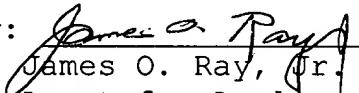
Dependent Claims 18-21 add further limitations to independent Claim 14 and are therefore also not made obvious by the cited references.

Therefore, the Examiner is respectfully requested to withdraw her rejection of Claims 18-21 under 35 U.S.C. 103(a) as being obvious over Deike (USPN 3,735,822).

In view of the above remarks it is believed that Claims 1-21 are in condition for allowance and such allowance by the Examiner is respectfully requested.

In the event the Examiner has further difficulties with the allowance of the application, she is invited to contact the undersigned attorney by telephone at (412) 380-0725 to resolve any remaining questions or issues by interview and/or by Examiner's amendment as to any matter that will expedite the completion of the prosecution of the application.

Respectfully submitted,

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